

House File 2221 - Introduced

HOUSE FILE 2221
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 522)

A BILL FOR

1 An Act relating to the admissibility of evidence in a
2 prosecution for physical abuse or a sexual offense upon or
3 against a child, person with an intellectual disability,
4 person with a cognitive impairment, or person with a
5 developmental disability.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 622.31A Admissibility of evidence
2 in certain physical abuse and sexual offense cases.

3 1. As used in this section:

4 a. "Child" means a person under fourteen years of age.

5 b. "Cognitive impairment" means a deficiency in a person's
6 short-term or long-term memory; orientation as to person,
7 place, and time; deductive or abstract reasoning; or judgment
8 as it relates to safety awareness.

9 c. "Developmental disability" means the same as defined
10 under the federal Developmental Disabilities Assistance and
11 Bill of Rights Act of 2000, Pub. L. No. 106-402, as codified in
12 42 U.S.C. §15002(8).

13 d. "Intellectual disability" means a disability of
14 children and adults who as a result of inadequately developed
15 intelligence have a significant impairment in ability to learn
16 or to adapt to the demands of society.

17 2. In a prosecution for physical abuse or a sexual offense
18 including but not limited to a sexual offense in violation of
19 section 709.2, 709.3, 709.4, 709.11, 709.12, 709.14, 709.15,
20 709.16, or 709.23, upon or against a child, a person with an
21 intellectual disability, person with a cognitive impairment, or
22 person with a developmental disability, the following evidence
23 shall be admitted as an exception to the hearsay rule if all of
24 the requirements in subsection 3 apply:

25 a. Testimony by the victim concerning an out-of-court
26 statement, whether consistent or inconsistent, made by the
27 victim to another person regarding the occurrence of the
28 offense.

29 b. Testimony by another concerning an out-of-court
30 statement, whether consistent or inconsistent, made by the
31 victim describing any act or detail pertaining to any act which
32 is an element of an offense charged for physical abuse or a
33 sexual offense against the victim.

34 3. The testimony described in subsection 2 shall be admitted
35 into evidence at trial as an exception to the hearsay rule if

1 all of the following apply:

2 a. The party intending to offer the statement does all of
3 the following:

4 (1) Notifies the adverse party of the intent to offer the
5 statement.

6 (2) Provides the adverse party with the name of the witness
7 through whom the statement will be offered.

8 (3) Provides the adverse party with a written summary of the
9 statement to be offered.

10 b. The court finds, in a hearing conducted outside the
11 presence of the jury, that the timing of the statement, the
12 content of the statement, and the circumstances surrounding
13 the making of the statement provide sufficient safeguards of
14 reliability.

15 c. The child, person with an intellectual disability, person
16 with a cognitive impairment, or a person with a developmental
17 disability testifies at the trial.

18 4. If a statement is admitted pursuant to this section,
19 the court shall instruct the jury that it is for the jury
20 to determine the weight and credibility to be given to the
21 statement, and in making that determination, the jury shall
22 consider the age and maturity of the child or the disability
23 of the person with an intellectual disability, person with
24 a cognitive impairment, or person with a developmental
25 disability; the nature of the statement; the circumstances
26 under which the statement was made, and any other relevant
27 factors.

28 5. This section shall not prevent the admission of any
29 evidence concerning the forfeiture of property under chapter
30 809A.

31 EXPLANATION

32 The inclusion of this explanation does not constitute agreement with
33 the explanation's substance by the members of the general assembly.

34 This bill relates to the admissibility of evidence in a
35 prosecution for physical abuse or a sexual offense upon or

1 against a child, person with an intellectual disability, person
2 with a cognitive impairment, or person with a developmental
3 disability.

4 The bill provides that in a prosecution for physical abuse
5 or a sexual offense including but not limited to a sexual
6 offense in violation of Code section 709.2 (sexual abuse in
7 the first degree), 709.3 (sexual abuse in the second degree),
8 709.4 (sexual abuse in the third degree), 709.11 (assault with
9 the intent to commit sexual abuse), 709.12 (indecent contact
10 with a child), 709.14 (lascivious conduct with a minor),
11 709.15 (sexual exploitation by a counselor, therapist, or
12 school employee), 709.16 (sexual misconduct with offenders
13 and juveniles), or 709.23 (continuous sexual abuse of a
14 child), upon or against a child, a person with an intellectual
15 disability, a person with a cognitive impairment, or a person
16 with a developmental disability, testimony by the victim
17 concerning an out-of-court statement, whether consistent or
18 inconsistent, made by the victim to another person regarding
19 the occurrence of the offense and testimony by another
20 concerning an out-of-court statement, whether consistent or
21 inconsistent, made by the victim describing any act or detail
22 pertaining to any act which is an element of an offense charged
23 for physical abuse or a sexual offense against the victim shall
24 be admitted into evidence at trial as an exception to the
25 hearsay rule. Such out-of-court statements shall be admitted
26 if the party intending to offer the statement notifies the
27 adverse party of the intent to offer the statement, provides
28 the adverse party with the name of the witness through whom
29 the statement will be offered, and provides the adverse party
30 with a written summary of the statement to be offered; the
31 court finds in a hearing conducted outside of the presence of
32 the jury that the timing of the statement, the content of the
33 statement, and the circumstances surrounding the making of the
34 statement provide sufficient safeguards of reliability; and the
35 child, person with an intellectual disability, person with a

1 cognitive impairment, or person with a developmental disability
2 testifies at the trial.

3 The bill provides that if a statement is admitted pursuant
4 to the bill, the court shall instruct the jury that it is for
5 the jury to determine the weight and credibility to be given to
6 the statement, and in making that determination, the jury shall
7 consider the age and maturity of the child or the disability
8 of the person with an intellectual disability, cognitive
9 impairment, or developmental disability; the nature of the
10 statement; the circumstances under which the statement was
11 made; and any other relevant factor.

12 The bill shall not prevent the admission of any evidence in a
13 forfeiture proceeding brought under Code chapter 809A.

14 The bill provides definitions for "child", "cognitive
15 impairment", "developmental disability", and "intellectual
16 disability".